

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC. *et al.*,

Defendants.

No. 2:23-cv-0932-JHC

DECLARATION OF KENNETH E.
PAYSON IN SUPPORT OF
DEFENDANTS' MOTION FOR
LEAVE TO FILE A STANDALONE
MOTION IN LIMINE

I, Kenneth E. Payson, declare as follows:

1. I am a partner at the law firm Davis Wright Tremaine LLP, counsel for Defendants Amazon.com, Inc.; Neil Lindsay; Russell Grandinetti; and Jamil Ghani in the above-captioned case. To the best of my knowledge, the matters set forth herein are true and correct and, if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Defendants' Motion for Leave to File a Standalone Motion in Limine and in accordance with the Western District of Washington's Local Civil Rule 7(d)(5). The parties have met and conferred in good faith, have exchanged emails, and spoke by phone in an attempt to resolve the disputes raised in Defendants' Motion for Leave to File a Standalone Motion in Limine and in the Standalone Motion in Limine Regarding Public FTC Statements.

EXHIBIT 1

From: Joseph Aronsohn <jaronsohn@hueston.com>
Sent: Thursday, May 8, 2025 9:06 PM
To: MacDonald, Colin; Joseph A. Reiter; Cohen, Jonathan; Jerjian, Olivia; Ware, Jonathan; Saunders, Anthony R.; Hoffman, Elena; Zwonik, Ryan; Mejia-Portillo, Johana; Taylor, Phoebe CTR; Mendelson, Evan; Tang, Jeffrey; Sifuentes, Rachel
Cc: Moez M. Kaba; Amazon/FTC [INT]; Howard, Jim; Payson, Kenneth; Lesczynski, Theo; Kim, Laura; Flahive Wu, Laura; Anthony, Stephen; Graubert, John; Kelly, Kevin
Subject: Re: FTC v. Amazon - Motion in Limine

Colin,

Thank you for confirming the FTC's position. Throughout this case, the FTC has "repeatedly objected" to "the Negative Option Rule rulemaking" as "irrelevant to this litigation." Dkt. 220 at 4. But as we have detailed in prior briefing and explained again on today's call, the FTC's rulemaking statements—including, without limitation, the statements about ROSCA cited in prior briefing—will be relevant to numerous issues at trial, including to the FTC's substantive claims, the FTC's demand for civil penalties, and Defendants' affirmative defenses. Accordingly, we understand that the parties are at an impasse, and we will file our motion.

From our call, we also understand that the FTC will oppose any request to move the dispositive motion deadline, including a request made at a conference with the Court. If that is incorrect, or if the FTC reconsiders its position, please let us know as soon as possible.

Best,

Joseph

Joseph Aronsohn

HUESTON HENNIGAN LLP

D: 213.788.4375

jaronsohn@hueston.com

[Biography](#)

From: MacDonald, Colin <cmacdonald@ftc.gov>
Sent: Thursday, May 8, 2025 4:57 PM
To: Joseph Aronsohn <jaronsohn@hueston.com>; Joseph A. Reiter <jreiter@hueston.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Jerjian, Olivia <ojerjian@ftc.gov>; Ware, Jonathan <jware1@ftc.gov>; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Hoffman, Elena <ehoffman@ftc.gov>; Zwonik, Ryan <rzwonik@ftc.gov>; Mejia-Portillo, Johana <jmejiaportillo@ftc.gov>; Taylor, Phoebe CTR <ptaylor3@ftc.gov>; Mendelson, Evan <emendelson@ftc.gov>; Tang, Jeffrey <jtang@ftc.gov>; Sifuentes, Rachel <rsifuentes@ftc.gov>
Cc: Moez M. Kaba <mkaba@hueston.com>; Amazon/FTC [INT] <amazon-ftc@hueston.com>; Howard, Jim <jimhoward@dwt.com>; Payson, Kenneth <kennethpayson@dwt.com>; Lesczynski, Theo <theoleszczynski@dwt.com>; Kim, Laura <lkim@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Anthony, Stephen <santhony@cov.com>; Graubert, John <jgraubert@cov.com>; Kelly, Kevin <kkelly@cov.com>
Subject: RE: FTC v. Amazon - Motion in Limine

Counsel,

I'm following up on our call earlier. First, regarding Amazon's motion in limine regarding statements about the negative option rulemaking, our ability to take a position is limited by our knowledge of the universe of statements to which it would apply. We do not stipulate to the admission of the 2019 Advance Notice of Proposed Rulemaking, the 2023 Notice of Proposed Rulemaking, the 2024 Final Rule, or other documents specifically cited in prior briefing to the Court. This is all the more true given Amazon's stated intent to seek their admission for all purposes, rather than limited to specific uses. To the extent there are other statements you would like us to consider, please reference the specific statement at issue.

Second, regarding the schedule proposal, as noted, we do not think a motion to "clarify" or otherwise alter the dispositive and *Daubert* deadline is permissible under the Court's November 5 Order. Regardless, we would oppose a motion to postpone the deadline for dispositive and *Daubert* motions, but we are open to a conference with the Court on the issue.

As always, we are happy to meet and confer regarding these and other matters.

Regards,

Colin D. A. MacDonald (he/him) | Attorney | Federal Trade Commission
Northwest Regional Office | 915 Second Ave., Ste. 2896 | Seattle, WA 98174
Tel.: (206) 220-4474 | Fax: (206) 220-6366 | Web: www.ftc.gov

From: Joseph Aronsohn <jaronsohn@hueston.com>

Sent: Thursday, May 8, 2025 11:06 AM

To: MacDonald, Colin <cmacdonald@ftc.gov>; Joseph A. Reiter <jreiter@hueston.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Jerjian, Olivia <ojerjian@ftc.gov>; Ware, Jonathan <jware1@ftc.gov>; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Chaudhry, Sana <schaudhry@ftc.gov>; Hoffman, Elena <ehoffman@ftc.gov>; Zwonik, Ryan <rzwonik@ftc.gov>; Mejia-Portillo, Johana <jmejiaportillo@ftc.gov>; Taylor, Phoebe CTR <ptaylor3@ftc.gov>; Mendelson, Evan <emendelson@ftc.gov>

Cc: Moez M. Kaba <mkaba@hueston.com>; Amazon/FTC [INT] <amazon-ftc@hueston.com>; Howard, Jim <jimhoward@dwt.com>; Payson, Kenneth <kennethpayson@dwt.com>; Lesczynski, Theo <theoleszczynski@dwt.com>; Kim, Laura <lkim@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Anthony, Stephen <santhony@cov.com>; Graubert, John <jgraubert@cov.com>; Kelly, Kevin <kkelly@cov.com>

Subject: Re: FTC v. Amazon - Motion in Limine

12:30 PM PT works for us, thanks. We'll circulate an invite.

Joseph Aronsohn

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[Biography](#)

From: MacDonald, Colin

Sent: Thursday, May 08, 2025 10:56 AM

To: Joseph A. Reiter; Cohen, Jonathan; Jerjian, Olivia; Ware, Jonathan; Saunders, Anthony R.; Chaudhry, Sana; Hoffman, Elena; Zwonik, Ryan; Mejia-Portillo, Johana; Taylor, Phoebe CTR; Mendelson, Evan

Cc: Joseph Aronsohn; Moez M. Kaba; Amazon/FTC [INT]; Howard, Jim; Payson, Kenneth; Lesczynski, Theo; Kim,

Laura; Flahive Wu, Laura; Anthony, Stephen; Graubert, John; Kelly, Kevin

Subject: RE: FTC v. Amazon - Motion in Limine

Counsel,

We are available at 12:30pm or between 2pm and 3:30pm Pacific today, or we can look for available times on Monday. We are also able to meet and confer about Joseph Aronsohn's proposal regarding the dispositive motions deadline. Please let us know if either of those times works for you.

Thanks,
Colin

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Northwest Regional Office | 915 Second Ave., Ste. 2896 | Seattle, WA 98174
Tel.: (206) 220-4474 | Fax: (206) 220-6366 | Web: www.ftc.gov

From: Joseph A. Reiter <jreiter@hueston.com>

Sent: Thursday, May 8, 2025 6:00 AM

To: Cohen, Jonathan <jcohen2@ftc.gov>; Jerjian, Olivia <ojerjian@ftc.gov>; Ware, Jonathan <jware1@ftc.gov>; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Chaudhry, Sana <schaudhry@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Hoffman, Elena <ehoffman@ftc.gov>; Zwonik, Ryan <rzwonik@ftc.gov>; Mejia-Portillo, Johana <jmejiaportillo@ftc.gov>; Taylor, Phoebe CTR <ptaylor3@ftc.gov>; Mendelson, Evan <emendelson@ftc.gov>

Cc: Joseph Aronsohn <jaronsohn@hueston.com>; Moez M. Kaba <mkaba@hueston.com>; Amazon/FTC [INT] <amazon-ftc@hueston.com>; Howard, Jim <jimhoward@dwt.com>; Payson, Kenneth <kennethpayson@dwt.com>; Lesczynski, Theo <theoleszczynski@dwt.com>; Kim, Laura <lkim@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Anthony, Stephen <santhony@cov.com>; Graubert, John <jgraubert@cov.com>; Kelly, Kevin <kkelly@cov.com>

Subject: FTC v. Amazon - Motion in Limine

Counsel – Defendants intend to file a motion in limine this week to admit at trial the FTC's public statements regarding ROSCA that were made in connection with the rulemaking process for the new Negative Option Rule. Please let us know when a member of your team is available to meet and confer today or tomorrow.

Joseph A. Reiter

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[Biography](#)

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Los Angeles CA 90014

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EXHIBIT 2

AMANDA BASTA Vol. I 30b6
FTC vs AMAZON.COM, INC., et al.

September 10, 2024

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF WASHINGTON</p> <p>3 AT SEATTLE</p> <p>4 -----</p> <p>5 FEDERAL TRADE COMMISSION,</p> <p>6 Plaintiff,</p> <p>7 V. No. 2:23-cv-0932-JHC</p> <p>8 AMAZON.COM, INC., et al.,</p> <p>9 Defendant. VOLUME I</p> <p>10 -----</p> <p>11</p> <p>12 30(B)(6) VIDEO-RECORDED DEPOSITION OF AMANDA BASTA</p> <p>13 ON BEHALF OF</p> <p>14 FEDERAL TRADE COMMISSION</p> <p>15</p> <p>16 Tuesday, September 10, 2024</p> <p>17 8:51 AM</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Reported by: Denise Dobner Vickery, RMR, CRR</p> <p>22 JOB NO.: J11644778</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 FEDERAL TRADE COMMISSION</p> <p>5 BUREAU OF CONSUMER PROTECTION</p> <p>6 Division of Enforcement</p> <p>7 BY: EVAN M. MENDELSON, ESQ.</p> <p>8 BY: OLIVIA JERJIAN, ESQ.</p> <p>9 600 Pennsylvania Avenue NW</p> <p>10 Washington, DC 20580</p> <p>11 202.326.3320</p> <p>12 emendelson@ftc.gov</p> <p>13</p> <p>14 Representing the Defendants:</p> <p>15 HUESTON HENNIGAN</p> <p>16 BY: MOEZ M. KABA, ESQ.</p> <p>17 BY: MICHAEL TODISCO, ESQ.</p> <p>18 BY: JOSEPH ARONSOHN, ESQ. (Via Zoom)</p> <p>19 523 West 6th Street, Suite 400</p> <p>20 Los Angeles, CA 90014</p> <p>21 213.788.4340</p> <p>22 mkaba@hueston.com</p>
Page 2	Page 4
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Tuesday, September 10, 2024</p> <p>6 8:51 AM</p> <p>7</p> <p>8 Video-Recorded 30(b)(6) Deposition of</p> <p>9 AMANDA BASTA on behalf of Federal Trade Commission,</p> <p>10 held at the offices of:</p> <p>11</p> <p>12 COVINGTON & BURLING LLP</p> <p>13 One CityCenter</p> <p>14 850 Tenth Street NW</p> <p>15 Washington, DC 20001</p> <p>16</p> <p>17</p> <p>18 Pursuant to notice, before Denise Dobner</p> <p>19 Vickery, Certified Realtime Reporter, Registered</p> <p>20 Merit Reporter, and Notary Public in and for the</p> <p>21 District of Columbia.</p> <p>22</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 VIDEOGRAPHER: Nathan Kane</p> <p>4</p> <p>5 ALSO PRESENT: Laura Craig</p> <p>6 Ben Langner, Senior Corporate</p> <p>7 Counsel, Amazon</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p>1 INDEX Page 5</p> <p>2 EXAMINATION OF AMANDA BASTA PAGE</p> <p>3 BY MR. KABA 7</p> <p>4 AFTERNOON SESSION 228</p> <p>5 DEPOSITION EXHIBITS</p> <p>6 NUMBER DESCRIPTION PAGE</p> <p>7 EXHIBIT 1 Top E-mail September 6, 2024 38</p> <p>8 RE: FTC v. Amazon - Defendants'</p> <p>9 Notice of 30(b)(6) Deposition</p> <p>10 EXHIBIT 2 FTC's Second Supplemental 82</p> <p>11 Responses and Objections to Amazon's</p> <p>12 First Set of Interrogatories</p> <p>13 EXHIBIT 3 Amended Complaint 129</p> <p>14 EXHIBIT 4 Restore Online Shoppers' 135</p> <p>15 Confidence Act (ROSCA)</p> <p>16 EXHIBIT 5 Proposed Rules FTC 16 CFR Part 425 184</p> <p>17 Negative Option Rule, Monday,</p> <p>18 April 24, 2023</p> <p>19 EXHIBIT 6 Notices FTC Enforcement Policy 381</p> <p>20 Statement Regarding Negative</p> <p>21 Option Marketing, Thursday,</p> <p>22 November 4, 2021</p>	<p>Page 7</p> <p>1 and I will be joined shortly by Olivia Jerjian also</p> <p>2 on behalf of the Federal Trade Commission.</p> <p>3 - - -</p> <p>4 AMANDA BASTA</p> <p>5 called for examination, and, after having been duly</p> <p>6 sworn, was examined and testified as follows:</p> <p>7 - - -</p> <p>8 EXAMINATION</p> <p>9 - - -</p> <p>10 BY MR. KABA:</p> <p>11 Q. Good morning, Ms. Basta.</p> <p>12 A. Good morning.</p> <p>13 Q. Could you just state and spell your</p> <p>14 full name and your title at the Federal Trade</p> <p>15 Commission?</p> <p>16 A. Sure. Amanda, A-m-a-n-d-a, Basta</p> <p>17 B-a-s-t-a. I'm Assistant Director within the</p> <p>18 Division of Enforcement in the Bureau of Consumer</p> <p>19 Protection.</p> <p>20 Q. Okay. And for how long have you been</p> <p>21 the Assistant Director within the Division of</p> <p>22 Enforcement in the Bureau of Consumer Protection?</p>
<p>Page 6</p> <p>1 PROCEEDINGS</p> <p>2 - - -</p> <p>3 THE VIDEOGRAPHER: This is Tape</p> <p>4 No. 1 to the videotaped deposition of Amanda Basta</p> <p>5 in the matter of FTC verse Amazon, et al., being</p> <p>6 heard before the United States District Court,</p> <p>7 Western District Division of Seattle, Case Number</p> <p>8 2:23-cv-0932.</p> <p>9 This deposition is being held at</p> <p>10 850 10th Street, Northwest, Washington, DC, on</p> <p>11 September 10, 2024 at 8:51 AM.</p> <p>12 My name is Nathan Kane and I'm the</p> <p>13 videographer. The court reporter is Denise Vickery.</p> <p>14 Counsel, will you please introduce</p> <p>15 yourselves and affiliation and the witness will be</p> <p>16 sworn.</p> <p>17 MR. KABA: It's Moez Kaba of</p> <p>18 Hueston Hennigan on behalf of the defendants, and</p> <p>19 I'm joined by colleagues whose appearance is noted</p> <p>20 on the record.</p> <p>21 MR. MENDELSON: Evan Mendelson on</p> <p>22 behalf of the plaintiff Federal Trade Commission,</p>	<p>Page 8</p> <p>1 A. Since August of 2018.</p> <p>2 Q. And what title did you have before</p> <p>3 that?</p> <p>4 A. I was a staff attorney.</p> <p>5 Q. Within which division?</p> <p>6 A. The Enforcement Division.</p> <p>7 Q. So same division?</p> <p>8 A. Yes.</p> <p>9 Q. And for how long were you a staff</p> <p>10 attorney?</p> <p>11 A. 10 years. I started in September of</p> <p>12 2008.</p> <p>13 Q. Okay. What were you doing before</p> <p>14 September of 2008?</p> <p>15 A. I was an associate at Kirkland & Ellis</p> <p>16 from August of 2004 until August of 2008.</p> <p>17 Q. Okay. And when did you graduate law</p> <p>18 school?</p> <p>19 A. 2002.</p> <p>20 Q. And where did you go to law school?</p> <p>21 A. University of Chicago.</p> <p>22 Q. And what did you do between graduation</p>

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<p style="text-align: right;">Page 37</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you recall around what time</p> <p>3 period that Amazon policy was in place?</p> <p>4 A. I don't.</p> <p>5 Q. Okay. Did you meet with anyone to</p> <p>6 prepare for today's deposition?</p> <p>7 A. Yes. I met with Mr. Mendelson,</p> <p>8 Ms. Jerjian, Mr. Nardini, Mr. Kohm.</p> <p>9 Q. When did you have these meetings or</p> <p>10 this meeting?</p> <p>11 A. We met a number of times over the last</p> <p>12 two weeks, and primarily I was meeting with</p> <p>13 Mr. Mendelson, you know, running through questions I</p> <p>14 had as I was preparing myself.</p> <p>15 Q. How many meetings did you have to</p> <p>16 prepare for your deposition today?</p> <p>17 A. We had, I want to say, four in-person</p> <p>18 meetings and we spoke on the phone probably most</p> <p>19 days in the last -- most weekdays during last two</p> <p>20 weeks.</p> <p>21 Q. Okay. So you probably spent tens of</p> <p>22 hours preparing for the deposition?</p>	<p style="text-align: right;">Page 39</p> <p>1 Mr. Aronsohn's e-mail dated September 5, 2024, and</p> <p>2 he identifies in this e-mail a series of topics.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you understand that with</p> <p>7 respect to each of these topics -- and we'll talk</p> <p>8 about them during our time together -- you have been</p> <p>9 designated by the FTC as the person most</p> <p>10 knowledgeable to testify about those topics?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Thank you.</p> <p>13 Okay.</p> <p>14 A. Can we take a break for a quick second?</p> <p>15 Q. Yes.</p> <p>16 A. This will not stick on.</p> <p>17 THE VIDEOGRAPHER: We are off the</p> <p>18 record at 9:23.</p> <p>19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: We are back on</p> <p>21 the record at 9:26. At 9:00 -- yeah.</p> <p>22 MR. KABA: We have the microphones</p>
<p style="text-align: right;">Page 38</p> <p>1 A. With counsel I would say 10 to 15 and</p> <p>2 probably about that on my own.</p> <p>3 Q. Okay. So 20 to 30 hours preparing for</p> <p>4 your deposition today; fair?</p> <p>5 A. Yes, I mean, specifically for the</p> <p>6 deposition. Because I'm involved in the day-to-day</p> <p>7 doings in the case, some stuff comes easier than</p> <p>8 others.</p> <p>9 Q. Sure. Sure.</p> <p>10 Other than the four individuals you</p> <p>11 mentioned that you met with, have you spoken to</p> <p>12 anyone else about your deposition today?</p> <p>13 A. No.</p> <p>14 MR. KABA: Okay. Okay. Let's</p> <p>15 mark as Exhibit 1 to your deposition.</p> <p>16 (Document marked for</p> <p>17 identification as Basta Exhibit 1.)</p> <p>18 BY MR. KABA:</p> <p>19 Q. It's an e-mail exchange between</p> <p>20 Mr. Mendelson, your counsel here, and Mr. Aronsohn,</p> <p>21 who is a colleague of mine.</p> <p>22 Ms. Basta, I want to focus on</p>	<p style="text-align: right;">Page 40</p> <p>1 sorted now, I think. I hope.</p> <p>2 BY MR. KABA:</p> <p>3 Q. Ms. Basta, have you ever been a member</p> <p>4 of Prime?</p> <p>5 A. Yes.</p> <p>6 Q. Are you currently?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know when you joined?</p> <p>9 MR. MENDELSON: Objection. Scope.</p> <p>10 THE WITNESS: No. (Laugh).</p> <p>11 BY MR. KABA:</p> <p>12 Q. No?</p> <p>13 A. A long time ago.</p> <p>14 Q. Do you know how you joined?</p> <p>15 MR. MENDELSON: Objection. Scope.</p> <p>16 THE WITNESS: I don't remember</p> <p>17 exactly. I know it was something that I had thought</p> <p>18 about and wanted to do. So I sought out kind of how</p> <p>19 to enroll and enrolled as its own. You know, I</p> <p>20 don't know exactly when, but I know that I was like,</p> <p>21 oh, I order from Amazon a lot. I should join Prime.</p> <p>22 BY MR. KABA:</p>

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<p style="text-align: right;">Page 61</p> <p>1 calling a toll-free number, speaking to a human and</p> <p>2 saying, "I wish to cancel my subscription," is a</p> <p>3 simple mechanism --</p> <p>4 MR. MENDELSON: Objection.</p> <p>5 BY MR. KABA:</p> <p>6 Q. -- to cancel?</p> <p>7 MR. MENDELSON: Objection. Calls</p> <p>8 for opinion. Vague.</p> <p>9 THE WITNESS: I mean, it depends</p> <p>10 on the context, right? If the consumer has to -- I</p> <p>11 mean, how long is the phone call? Are there save</p> <p>12 offers? Are there impediments?</p> <p>13 All of this is contextual. So it</p> <p>14 may be a simple mechanism in some cases. It may not</p> <p>15 in others. And certainly if they call asking to</p> <p>16 cancel and are directed to an online flow that is</p> <p>17 itself complicated and not simple, that's not</p> <p>18 simple.</p> <p>19 BY MR. KABA:</p> <p>20 Q. Okay. So I want to go through this.</p> <p>21 A. Uh-huh.</p> <p>22 Q. I want you to be for now --</p>	<p style="text-align: right;">Page 63</p> <p>1 calling the Amazon toll-free number?</p> <p>2 MR. MENDELSON: Objection. Vague.</p> <p>3 THE WITNESS: (Pause). I'm</p> <p>4 struggling because, again, my understanding is the</p> <p>5 first time that somebody -- or when somebody calls,</p> <p>6 they're not immediately given the option to cancel</p> <p>7 over the phone. So that -- it's making it</p> <p>8 difficult.</p> <p>9 I don't know at what point in the</p> <p>10 call they get to that. So, yeah, I would want to</p> <p>11 know kind of what -- what happens in the run-up.</p> <p>12 BY MR. KABA:</p> <p>13 Q. That's something you would want to</p> <p>14 know; correct?</p> <p>15 A. Uh-huh. Yes.</p> <p>16 Q. You do not know, though?</p> <p>17 A. No.</p> <p>18 Q. Okay. So let's focus on my question</p> <p>19 again, Ms. Basta.</p> <p>20 Regardless of the content of the phone</p> <p>21 call for now?</p> <p>22 A. Uh-huh.</p>
<p style="text-align: right;">Page 62</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- with me that there are consumers who</p> <p>3 call --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- Amazon's toll-free number and say,</p> <p>6 "I wish to cancel Prime," and can cancel Prime that</p> <p>7 way. Okay?</p> <p>8 A. Uh-huh.</p> <p>9 Q. You understand?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So you identified a number of</p> <p>12 things that you would then want to consider as part</p> <p>13 of the context for whether or not that mechanism,</p> <p>14 that is, calling a toll-free number, complies with</p> <p>15 ROSCA's requirement of a simple mechanism to cancel?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. One of the things you said is</p> <p>18 relevant to the inquiry is how long the telephone</p> <p>19 call takes?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know how long it takes for a</p> <p>22 consumer to cancel their Prime subscription by</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Okay. You with me?</p> <p>2 A. Yes.</p> <p>3 Q. Regardless of what the consumer is told</p> <p>4 on the telephone, how -- do you know how long it</p> <p>5 takes for a consumer to call the toll-free number,</p> <p>6 no matter what the Amazon customer service rep says</p> <p>7 on the phone, for them to then be able to cancel</p> <p>8 their Prime subscription?</p> <p>9 A. I do not.</p> <p>10 Q. Okay. Do you know if it takes more</p> <p>11 than one minute?</p> <p>12 A. I do not.</p> <p>13 Q. Do you know if it takes less than one</p> <p>14 minute?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. The second thing you mentioned</p> <p>17 is, are there save offers.</p> <p>18 What is a save offer?</p> <p>19 A. A save offer is when somebody says,</p> <p>20 okay, we'll cancel, but first you may want</p> <p>21 to -- before you cancel, we'll offer you three</p> <p>22 months for free. And then -- and try to get the</p>

<p style="text-align: right;">Page 65</p> <p>1 person to stay in the program versus canceling. So</p> <p>2 it's -- it's marketing offers that are kind of</p> <p>3 interspersed with the cancellation transaction.</p> <p>4 Q. Okay. Do you know when a customer</p> <p>5 calls Amazon to cancel their Prime subscription</p> <p>6 whether they are presented with any save offers at</p> <p>7 all?</p> <p>8 A. I don't.</p> <p>9 Q. Okay. And there's nothing unlawful</p> <p>10 about presenting a sales -- a save offer to a</p> <p>11 customer who is seeking to cancel; correct?</p> <p>12 A. Not currently, no.</p> <p>13 MR. MENDELSON: Objection. Calls</p> <p>14 for a legal opinion.</p> <p>15 THE WITNESS: Sorry.</p> <p>16 BY MR. KABA:</p> <p>17 Q. I'm sorry. We got the --</p> <p>18 A. Entangled.</p> <p>19 Q. We got a little entangled there. So</p> <p>20 let me try again.</p> <p>21 Ms. Basta, ROSCA does not prohibit a</p> <p>22 company from presenting a save offer, as you've</p>	<p style="text-align: right;">Page 67</p> <p>1 BY MR. KABA:</p> <p>2 Q. So my statement is correct. Yes?</p> <p>3 MR. MENDELSON: Same objection.</p> <p>4 THE WITNESS: I'm trying to avoid</p> <p>5 the double negative.</p> <p>6 BY MR. KABA:</p> <p>7 Q. My statement is correct that ROSCA does</p> <p>8 not bar or prohibit a company from presenting a save</p> <p>9 offer prior to processing a cancellation request;</p> <p>10 correct?</p> <p>11 A. To the extent that it does not -- to</p> <p>12 the extent that there is a simple mechanism even</p> <p>13 with a save offer, yes.</p> <p>14 Q. Okay. So if a consumer can call to</p> <p>15 cancel their Prime subscription and before the</p> <p>16 subscription is canceled they get an offer that</p> <p>17 says, hey, we'll give you a discount or why don't</p> <p>18 you -- we'll give you three more months for free,</p> <p>19 that's not prohibited by ROSCA; correct?</p> <p>20 MR. MENDELSON: Objection. Vague.</p> <p>21 THE WITNESS: If it -- it is not</p> <p>22 prohibited by ROSCA if the mechanism is simple</p>
<p style="text-align: right;">Page 66</p> <p>1 defined it, to a consumer who calls or goes online</p> <p>2 or chats to cancel; correct?</p> <p>3 MR. MENDELSON: Objection. Scope.</p> <p>4 Calls for legal opinion.</p> <p>5 THE WITNESS: There's no per se</p> <p>6 bar, no.</p> <p>7 BY MR. KABA:</p> <p>8 Q. Thank you.</p> <p>9 I think because I asked "does not" and</p> <p>10 then you said "no," we've now got a double negative.</p> <p>11 So I'm going to try it one more time.</p> <p>12 A. (Laugh).</p> <p>13 Q. Ms. Basta, regardless of the mechanism</p> <p>14 to cancel either on the phone, through the website</p> <p>15 cancellation flow, through the chatbot or through</p> <p>16 the e-mail, ROSCA does not prohibit a company from</p> <p>17 presenting a save offer prior to processing a</p> <p>18 cancellation request; correct?</p> <p>19 A. There's --</p> <p>20 MR. MENDELSON: Same objections.</p> <p>21 THE WITNESS: There's no pro se</p> <p>22 prohibition on save offers in ROSCA.</p>	<p style="text-align: right;">Page 68</p> <p>1 overall, yes.</p> <p>2 BY MR. KABA:</p> <p>3 Q. Okay. So that's where I'm struggling</p> <p>4 because you're saying -- to decide whether or not</p> <p>5 something is simple, you need to look at context;</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. So some -- a mechanism may be simple in</p> <p>9 one case and not simple in another, depending on</p> <p>10 lots of various other factors that you would</p> <p>11 consider; correct?</p> <p>12 MR. MENDELSON: Objection. Vague.</p> <p>13 Calls for legal opinion.</p> <p>14 THE WITNESS: So I think, you</p> <p>15 know, like advertising. It's the -- it's the</p> <p>16 overall impression, right? And where there are</p> <p>17 features of a mechanism that cause it not to be</p> <p>18 simple for consumers, then that's going to violate</p> <p>19 ROSCA.</p> <p>20 If -- if there are ways to present</p> <p>21 that offer in a way that allows the mechanism to be</p> <p>22 simple, then it will pass muster under ROSCA. But</p>

<p style="text-align: right;">Page 69</p> <p>1 that's -- it's hard to analyze any of it in a vacuum</p> <p>2 because -- and with, you know, how consumers</p> <p>3 interact with it.</p> <p>4 It's just, you know, were they</p> <p>5 placed on a hold? Is it their first call? Is it</p> <p>6 their third call? Is it, you know, is it very clear</p> <p>7 that when the save offer like three months free ends</p> <p>8 that it will resume, and at what rate? And just</p> <p>9 making sure consumers understand what the</p> <p>10 transaction that they're entering into is and that</p> <p>11 is very context-dependent.</p> <p>12 BY MR. KABA:</p> <p>13 Q. Okay. So going back to just my</p> <p>14 question.</p> <p>15 A. Uh-huh.</p> <p>16 Q. It is the FTC's position that a</p> <p>17 cancellation mechanism can be simple in one context</p> <p>18 and no longer simple in a different context,</p> <p>19 depending on various other features or criteria that</p> <p>20 the FTC would consider; correct?</p> <p>21 MR. MENDELSON: Objection. Vague.</p> <p>22 THE WITNESS: Well, not the FTC.</p>	<p style="text-align: right;">Page 71</p> <p>1 BY MR. KABA:</p> <p>2 Q. Right. I think you think I'm asking</p> <p>3 you a different question than maybe I'm asking you.</p> <p>4 That's my fault.</p> <p>5 A. Okay.</p> <p>6 Q. So let me -- let me try again.</p> <p>7 It is the FTC's position -- well, I'll</p> <p>8 ask you more broadly.</p> <p>9 It is the FTC's position that whether</p> <p>10 or not a disclosure is clear and conspicuous is</p> <p>11 context-specific; correct?</p> <p>12 A. Absolutely.</p> <p>13 Q. It is the FTC's position that whether</p> <p>14 or not you obtained informed consent is</p> <p>15 context-specific; correct?</p> <p>16 A. Yes.</p> <p>17 Q. It is the FTC's position that whether</p> <p>18 or not a mechanism to cancel is simple is</p> <p>19 context-specific; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And so you don't look only at the</p> <p>22 disclosure or only at the mechanism.</p>
<p style="text-align: right;">Page 70</p> <p>1 Ultimately, the court.</p> <p>2 BY MR. KABA:</p> <p>3 Q. That's fair.</p> <p>4 But you are the one bringing the claim;</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So it is the FTC's position that</p> <p>8 a cancellation mechanism can be simple in one</p> <p>9 context and not simple in another context, and</p> <p>10 whoever is deciding on the ROSCA violation would</p> <p>11 need to consider all sorts of different criteria in</p> <p>12 order to make that determination; correct?</p> <p>13 MR. MENDELSON: Objection. Vague.</p> <p>14 THE WITNESS: I mean, if they're</p> <p>15 applying the same criteria across circumstances, I</p> <p>16 would imagine those cases would come out very</p> <p>17 similarly.</p> <p>18 But I don't think it's like for</p> <p>19 company A, you look at XYZ. For company B, you look</p> <p>20 at 123. I think you look at the same sets of</p> <p>21 factors across all of them, and that's going to give</p> <p>22 you a fairly consistent result.</p>	<p style="text-align: right;">Page 72</p> <p>1 You look at all sorts of other criteria</p> <p>2 to decide whether or not there is a ROSCA violation;</p> <p>3 correct?</p> <p>4 A. I'm struggling with the word</p> <p>5 "criteria."</p> <p>6 Q. Features?</p> <p>7 A. Facts. Do we have evidence that</p> <p>8 consumers are actually confused when they're</p> <p>9 presented with it? You know, some may be features,</p> <p>10 you know, of the way that it's designed. Is there,</p> <p>11 you know, a lot of -- a lot of things distracting</p> <p>12 the consumer?</p> <p>13 You know, there's -- so criteria is</p> <p>14 just the word I'm struggling with, but there's a lot</p> <p>15 of facts, which is why we conduct a full</p> <p>16 investigation, right?</p> <p>17 Because we want to know, you know, what</p> <p>18 evidence is out there that tells us how consumers</p> <p>19 are interacting with it and how, you know, what the</p> <p>20 company understands about consumer's interaction</p> <p>21 with it. What facts are there in terms of the</p> <p>22 design.</p>

<p style="text-align: right;">Page 77</p> <p>1 knowing exactly what's happening in those time</p> <p>2 periods, analyzing it in a vacuum just doesn't work.</p> <p>3 BY MR. KABA:</p> <p>4 Q. Okay. So then just to be clear, with</p> <p>5 respect to figuring out whether a cancellation</p> <p>6 mechanism is simple, you couldn't identify sort of</p> <p>7 objective quantitative criteria that you could say,</p> <p>8 I've checked these boxes. It makes the mechanism</p> <p>9 simple.</p> <p>10 Is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. Instead you would need to look at, as</p> <p>13 we've now talked about many times, context-specific</p> <p>14 interactions, you know, specific other features of</p> <p>15 the mechanism to decide whether or not it is simple;</p> <p>16 correct?</p> <p>17 MR. MENDELSON: Objection. Scope.</p> <p>18 Vague.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. KABA:</p> <p>21 Q. Okay. Prior to the FTC's investigation</p> <p>22 launching in February of 2021, are you aware of any</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. And Mr. Mendelson will have an</p> <p>2 opportunity at the end of the deposition to ask you</p> <p>3 additional questions that he might have of you to</p> <p>4 get out additional testimony that you may wish to</p> <p>5 provide.</p> <p>6 Do you understand?</p> <p>7 A. Yes, but I think I did answer the</p> <p>8 question. You asked about messages to Amazon about</p> <p>9 violations or about --</p> <p>10 Q. Why don't I -- why don't I --</p> <p>11 A. Yeah, try it again.</p> <p>12 Q. -- ask you my question. Okay?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Prior to the FTC's investigation</p> <p>15 launching in February of 2021 --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- are you aware of any communication,</p> <p>18 correspondence, direction from the FTC telling</p> <p>19 Amazon that Amazon's Prime enrollment flow or</p> <p>20 cancellation flow violated ROSCA?</p> <p>21 A. Not Prime --</p> <p>22 MR. MENDELSON: Same objection.</p>
<p style="text-align: right;">Page 78</p> <p>1 FTC communication or instruction or correspondence</p> <p>2 or message of any kind to Amazon telling Amazon that</p> <p>3 the FTC believed that Amazon's flows or Prime itself</p> <p>4 violated ROSCA?</p> <p>5 MR. MENDELSON: Objection. Scope.</p> <p>6 THE WITNESS: Not Prime itself.</p> <p>7 I know in 2014, the FTC sued Amazon over failure to</p> <p>8 provide express informed consent based on some</p> <p>9 varied disclosures in a different -- in a different</p> <p>10 mobile flow, and so certainly the idea that that put</p> <p>11 in terms and conditions in -- in certain contexts</p> <p>12 could deprive of express informed consent was a</p> <p>13 concept familiar to Amazon.</p> <p>14 BY MR. KABA:</p> <p>15 Q. Okay. So you're, again, answering a</p> <p>16 different question than the one I've asked.</p> <p>17 A. Uh-huh.</p> <p>18 Q. So I would like you -- it will be</p> <p>19 helpful, so that I don't have to ask my question</p> <p>20 multiple times, if you could at least initially just</p> <p>21 focus on responding to my question.</p> <p>22 A. Uh-huh.</p>	<p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: Not Prime, no.</p> <p>2 BY MR. KABA:</p> <p>3 Q. Okay. And you contend that in a</p> <p>4 different context, the FTC had filed suit in 2014</p> <p>5 with respect to certain disclosures that were in</p> <p>6 terms and conditions; correct?</p> <p>7 A. Yes.</p> <p>8 Q. So from that time in 2014 --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- even -- even that other action, if</p> <p>11 we included that. From 2014 through February 2021</p> <p>12 when the FTC launched its investigation in this</p> <p>13 case, that's about seven years; right?</p> <p>14 A. Yes.</p> <p>15 Q. Are you aware of any correspondence</p> <p>16 message communication to Amazon that Amazon's</p> <p>17 enrollment flows or cancellation flows violated</p> <p>18 ROSCA?</p> <p>19 MR. MENDELSON: Same objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. KABA:</p> <p>22 Q. Okay. As of what date does the FTC</p>

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<p style="text-align: right;">Page 81</p> <p>1 contend Amazon's enrollment flows violated ROSCA?</p> <p>2 A. I'd have to look back at the complaint,</p> <p>3 but I believe 2018.</p> <p>4 Q. And as of what date does the FTC</p> <p>5 contend Amazon's cancellation flows violated ROSCA?</p> <p>6 A. I think, again, I'd have to look at the</p> <p>7 complaint, but I believe it's approximately the same</p> <p>8 time period.</p> <p>9 Q. Let me see if I can help you.</p> <p>10 By the way, we talked about Consumer</p> <p>11 Sentinel complaints, but it wasn't consumer</p> <p>12 complaints that triggered this investigation to</p> <p>13 Prime; right?</p> <p>14 A. Not initially. As I said, we looked at</p> <p>15 them pretty early on.</p> <p>16 Q. Right. So, again, my question.</p> <p>17 A. Uh-huh.</p> <p>18 Q. I could see you were probably very good</p> <p>19 questioner at depositions because the way you're</p> <p>20 responding.</p> <p>21 My question is: It was not consumer</p> <p>22 complaints that launched or triggered the</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Yes.</p> <p>2 Q. And that means that the responses</p> <p>3 contained in this document are true; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And Mr. Mendelson is your counsel here</p> <p>6 and counsel for the FTC in this case; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And if you look at page 53.</p> <p>9 A. Uh-huh.</p> <p>10 Q. You see it says:</p> <p>11 "Amazon's Enrollment Flows have</p> <p>12 violated ROSCA and Section 5 since at least 2014."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. "And its Cancellation Flows since at</p> <p>17 least 2016"; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So it's -- you said you believed</p> <p>20 it was 2018, but you wanted to refresh your memory.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Yes?</p>
<p style="text-align: right;">Page 82</p> <p>1 investigation into Prime; correct?</p> <p>2 A. Correct.</p> <p>3 MR. KABA: Thank you.</p> <p>4 I'm going to mark as Exhibit 2 the</p> <p>5 FTC's Second Supplemental Responses and Objections</p> <p>6 to Amazon's First Set of Interrogatories.</p> <p>7 (Document marked for</p> <p>8 identification as Basta Exhibit 2.)</p> <p>9 BY MR. KABA:</p> <p>10 Q. And I'm going to focus you on the</p> <p>11 bottom of page 52 to the top of -- I'm sorry -- on</p> <p>12 page 52 and 53.</p> <p>13 And if you look at page 53 --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- Ms. Basta.</p> <p>16 By the way, you recognize these as the</p> <p>17 FTC's responses and objections to Amazon's</p> <p>18 interrogatories; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you see on the last page,</p> <p>21 it's -- it's signed under penalty of perjury by</p> <p>22 Mr. Mendelson?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes.</p> <p>2 Q. Does this refresh your memory that the</p> <p>3 FTC contends Amazon's enrollment flows have violated</p> <p>4 ROSCA since at least 2014?</p> <p>5 A. Yes.</p> <p>6 Q. And that the cancellation flows since</p> <p>7 at least 2016?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. From 2014 up until the</p> <p>10 investigation and litigation in this case, can you</p> <p>11 identify a single communication from the FTC telling</p> <p>12 Amazon that its flows -- its enrollment flows</p> <p>13 violated ROSCA and Section 5?</p> <p>14 A. No.</p> <p>15 MR. MENDELSON: Objection. Scope.</p> <p>16 BY MR. KABA:</p> <p>17 Q. From 2016 up until the time of the</p> <p>18 investigation and litigation in this case, can you</p> <p>19 identify a single instance in which the FTC told</p> <p>20 Amazon that its cancellation flows violated ROSCA</p> <p>21 and Section 5?</p> <p>22 MR. MENDELSON: Objection. Scope.</p>

<p style="text-align: right;">Page 89</p> <p>1 then.</p> <p>2 So that's -- when you're asking it kind</p> <p>3 of lumped together, I'm just having trouble</p> <p>4 answering it.</p> <p>5 Q. Okay. So I'm not asking you that every</p> <p>6 flow is publicly available at every time.</p> <p>7 Does that help clarify for you?</p> <p>8 A. Can you ask it again?</p> <p>9 Q. Sure.</p> <p>10 We can do it in reference to --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- to the -- to the FTC's verified</p> <p>13 responses --</p> <p>14 A. Sure.</p> <p>15 Q. -- to Amazon's interrogatory.</p> <p>16 The FTC has said that since at least</p> <p>17 2014 Amazon's enrollment flows have continuously</p> <p>18 violated ROSCA; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And at least at -- as of the</p> <p>21 dates those violating allegedly flows existed, they</p> <p>22 were available to the public; correct?</p>	<p style="text-align: right;">Page 91</p> <p>1 that the FTC now contends violated ROSCA; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Thank you.</p> <p>4 Are you aware of the FTC receiving --</p> <p>5 strike that.</p> <p>6 Are you aware of the FTC looking at</p> <p>7 consumer complaints or interest group complaints or</p> <p>8 public reporting about Amazon's Prime enrollment</p> <p>9 flows prior to launching the investigation in</p> <p>10 February 2021?</p> <p>11 A. Can you repeat it?</p> <p>12 Q. Sure.</p> <p>13 Did the FTC look at consumer complaints</p> <p>14 or interest group complaints or public reporting</p> <p>15 about Prime -- Amazon's Prime flows enrollment and</p> <p>16 cancellation prior to launching the investigation in</p> <p>17 February 2021?</p> <p>18 MR. MENDELSON: Objection. Scope.</p> <p>19 THE WITNESS: Not that I'm aware</p> <p>20 of.</p> <p>21 BY MR. KABA:</p> <p>22 Q. Okay. When we talk about -- do you</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And so someone could have gone</p> <p>3 on in 2014 or 2015 or 2016 and seen what the FTC</p> <p>4 would contend is enrollment flow that violates</p> <p>5 ROSCA; correct?</p> <p>6 MR. MENDELSON: Objection. Vague.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. KABA:</p> <p>9 Q. Okay. Similar question with respect to</p> <p>10 the FTC's contention that Amazon's cancellation</p> <p>11 flows have violated ROSCA since at least 2016.</p> <p>12 Okay?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Someone -- sorry. Strike that. Let me</p> <p>15 take one step back.</p> <p>16 Since at least 2016, Amazon's</p> <p>17 cancellation flows as they existed as of the</p> <p>18 relevant time were publicly available; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So someone could have gone on in 2016</p> <p>21 or 2017 or 2018 and viewed -- publicly viewed</p> <p>22 Amazon's cancellation flow as it existed at the time</p>	<p style="text-align: right;">Page 92</p> <p>1 think it's fair to characterize the FTC's complaint</p> <p>2 in this action as concerning Amazon's flows?</p> <p>3 A. (Pause).</p> <p>4 Q. I just want to get the same --</p> <p>5 A. Go on.</p> <p>6 Well, I was going to say too I think I</p> <p>7 as me or I as the representative of the Commission?</p> <p>8 Q. Well, you as the person most</p> <p>9 knowledgeable at the Commission --</p> <p>10 A. Okay.</p> <p>11 Q. -- about the topics that we're here to</p> <p>12 talk about.</p> <p>13 A. Yes.</p> <p>14 Q. Do you -- is it fair to characterize</p> <p>15 the FTC's complaint in this action as concerning</p> <p>16 Amazon's flows?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then when we refer to</p> <p>19 "Amazon's flows," is it fair to say that that</p> <p>20 pertains to Amazon's enrollment in Prime flow and</p> <p>21 cancellation of Prime flow -- flows?</p> <p>22 A. Yes, with one caveat on the enrollment</p>

<p style="text-align: right;">Page 93</p> <p>1 flows.</p> <p>2 Q. Okay.</p> <p>3 A. They look very different. So sometimes</p> <p>4 answering in a general way I don't know. It may get</p> <p>5 challenging.</p> <p>6 Q. Okay. That's perfectly fair.</p> <p>7 And when I ask questions concerning the</p> <p>8 flows, you -- it's perfectly fair for you to say,</p> <p>9 well, I draw a distinction between a particular flow</p> <p>10 and another. But it's a fair point. So let's make</p> <p>11 sure the record is clear.</p> <p>12 There are various enrollment flows for</p> <p>13 a consumer to enroll in Prime; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And they look very different? Your</p> <p>16 words.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Does the FTC contend that every</p> <p>19 single one of those flows violates ROSCA?</p> <p>20 A. We identified a number in the</p> <p>21 complaint, and so I would say those. The SOSP, the</p> <p>22 UPDP, SPC, TrueSPC, and the Prime Video pathway to</p>	<p style="text-align: right;">Page 95</p> <p>1 allegations currently.</p> <p>2 Q. Okay. So if neither the complaint nor</p> <p>3 the interrogatory responses identify any particular</p> <p>4 enrollment flow, then at least at this point, the</p> <p>5 FTC does not contend that that version of the flow</p> <p>6 violates ROSCA; correct?</p> <p>7 A. Not in the litigation, no.</p> <p>8 Q. Okay. We have double negatives, and</p> <p>9 you're adding a qualifier that's confusing to me.</p> <p>10 A. Okay.</p> <p>11 Q. So I'm going -- I'm going to try that.</p> <p>12 So it might be easier if I'm saying</p> <p>13 "correct" and what you intend to tell me is yes,</p> <p>14 that statement is correct --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- for you to just say "correct" --</p> <p>17 A. Okay.</p> <p>18 Q. -- as opposed to "not in this, no" --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- which muddies the record a bit.</p> <p>21 If neither the complaint nor the</p> <p>22 interrogatory responses identify any particular</p>
<p style="text-align: right;">Page 94</p> <p>1 enrollment in Prime. And then we also mentioned --</p> <p>2 with respect to cancellation, we mentioned a few</p> <p>3 other things but --</p> <p>4 Q. Okay.</p> <p>5 A. -- enrollment, yes.</p> <p>6 Q. So if I wanted to understand which of</p> <p>7 the enrollment flows the FTC contends violates</p> <p>8 Prime, I would just look at what's in the complaint?</p> <p>9 A. The complaint and the interrogatory</p> <p>10 responses, yes.</p> <p>11 Q. Okay.</p> <p>12 A. That lays it out fully.</p> <p>13 Q. Okay. And there are flows that are not</p> <p>14 identified in the complaint or the interrogatory</p> <p>15 responses; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And so the FTC does not contend, at</p> <p>18 least at this point, that those flows violate ROSCA;</p> <p>19 correct?</p> <p>20 A. The allegations are those in the</p> <p>21 complaint and the interrogatories, yes. So if</p> <p>22 they're not mentioned, they're not part of the</p>	<p style="text-align: right;">Page 96</p> <p>1 Prime enrollment flow, then at least for the purpose</p> <p>2 of this litigation, the FTC does not contend that</p> <p>3 that version of the flow violates ROSCA; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Thank you.</p> <p>6 I want to talk to you a little bit</p> <p>7 about dark patterns.</p> <p>8 Are you familiar with the phrase "dark</p> <p>9 patterns"?</p> <p>10 A. I am.</p> <p>11 Q. Okay. Can you define what a dark</p> <p>12 pattern is?</p> <p>13 A. A dark pattern is a design element</p> <p>14 that -- I'd have to look at actually the complaint</p> <p>15 for the -- for the actual definition of it.</p> <p>16 But generally speaking, it is a design</p> <p>17 element that fools, tricks, and misleads consumers</p> <p>18 into not understanding kind of what they are doing</p> <p>19 on a particular website.</p> <p>20 Q. Okay. Is there -- is the use of dark</p> <p>21 patterns prohibited as a matter of law?</p> <p>22 A. There is no per se prohibition on the</p>

<p style="text-align: right;">Page 97</p> <p>1 use of dark patterns.</p> <p>2 Q. Can you identify for us any statute or</p> <p>3 law that uses the phrase "dark patterns"?</p> <p>4 MR. MENDELSON: Objection. Scope.</p> <p>5 THE WITNESS: Anywhere?</p> <p>6 BY MR. KABA:</p> <p>7 Q. In America.</p> <p>8 A. None that -- that the FTC enforces.</p> <p>9 Q. Okay. Can you -- so you cannot</p> <p>10 identify any statute or law that the FTC enforces</p> <p>11 that even uses the phrase "dark patterns"; correct?</p> <p>12 A. That uses the phrase, correct.</p> <p>13 Q. And can you think of any law or statute</p> <p>14 in America that uses the phrase "dark patterns,"</p> <p>15 whether or not the FTC enforces?</p> <p>16 MR. MENDELSON: Objection. Scope.</p> <p>17 THE WITNESS: I don't know that</p> <p>18 I've ever looked.</p> <p>19 BY MR. KABA:</p> <p>20 Q. So is the answer you cannot?</p> <p>21 A. I -- I can't, but I wouldn't -- there</p> <p>22 may be. I just wouldn't know.</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. And you've already agreed with</p> <p>2 me that there is no law that bars or prohibits the</p> <p>3 use of dark patterns as a rule; correct?</p> <p>4 A. Sure. There's no per se bar, yes.</p> <p>5 Q. Okay. You keep -- you have said now</p> <p>6 "per se bar" --</p> <p>7 A. Right.</p> <p>8 Q. -- a number of times.</p> <p>9 What does "per se bar" mean?</p> <p>10 A. So there's no -- nothing that says you</p> <p>11 cannot use a dark pattern. There are, you know, in</p> <p>12 terms of other laws that exist. So take the FTC</p> <p>13 Act, which prohibits deceptive and unfair practices</p> <p>14 in commerce.</p> <p>15 If a dark pattern causes something to</p> <p>16 be deceptive, then that would be a violation of the</p> <p>17 FTC Act, regardless of whether the FTC Act says</p> <p>18 "dark patterns" or not.</p> <p>19 In the ROSCA context, if the use of a</p> <p>20 dark pattern causes the disclosures not to be clear</p> <p>21 and conspicuous or a consumer to not be able to give</p> <p>22 express informed consent, then that would violate</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. I'm asking because you -- when I asked</p> <p>2 you that question, you said "none that the FTC</p> <p>3 enforces." So I just want to make sure.</p> <p>4 A. Right, because those are the ones I'm</p> <p>5 familiar with. That's -- so thinking it through</p> <p>6 the -- the universe of statutes enforced by the FTC,</p> <p>7 I am not aware. Like none of those use the term</p> <p>8 "dark patterns."</p> <p>9 Q. Okay. So I want to make sure I have a</p> <p>10 full answer and so because it seemed like you were</p> <p>11 giving a qualifier.</p> <p>12 A. Uh-huh. Sure.</p> <p>13 Q. I want to make sure I have --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- a complete record.</p> <p>16 Whether or not the FTC is in charge of</p> <p>17 enforcing it --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- can you identify any law in America</p> <p>20 that uses the term "dark patterns"?</p> <p>21 A. I don't know whether there are any or</p> <p>22 aren't. So I can't identify, no.</p>	<p style="text-align: right;">Page 100</p> <p>1 ROSCA.</p> <p>2 So when I say there's no law -- there's</p> <p>3 no law that says dark patterns are illegal; however,</p> <p>4 dark patterns can be used in the course of illegal</p> <p>5 conduct.</p> <p>6 I guess that's the distinction I'm</p> <p>7 trying to draw.</p> <p>8 Q. Okay. So, but ROSCA itself does not</p> <p>9 speak to dark patterns; correct?</p> <p>10 A. No. It speaks to clear and conspicuous</p> <p>11 disclosure and express informed consent.</p> <p>12 Q. We keep doing the I ask you "correct,"</p> <p>13 your answer is "yes, that's correct," but you say</p> <p>14 "no" and it --</p> <p>15 A. Yeah.</p> <p>16 Q. So I just want to be --</p> <p>17 A. Yeah.</p> <p>18 Q. You and I understand what you're saying</p> <p>19 because we're sitting here talking about it --</p> <p>20 A. Uh-huh. Sure.</p> <p>21 Q. -- but the record needs to be clean.</p> <p>22 ROSCA itself does not speak to dark</p>

<p style="text-align: right;">Page 157</p> <p>1 comply -- all a consumer would need to know about</p> <p>2 complying with ROSCA is just what the words on the</p> <p>3 page say, that is, the text of ROSCA?</p> <p>4 A. That is -- that is what gives you what</p> <p>5 you need to do to comply with ROSCA, yes.</p> <p>6 Q. Okay. But then you've also told me</p> <p>7 that clear and conspicuous is context-specific;</p> <p>8 right?</p> <p>9 That's what you testified to earlier?</p> <p>10 A. Correct.</p> <p>11 Q. And express informed consent is</p> <p>12 context-specific; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And simple mechanisms is</p> <p>15 context-specific; right?</p> <p>16 A. Yes.</p> <p>17 Q. So where would I look as a business</p> <p>18 owner that wants to comply with ROSCA to understand</p> <p>19 in what context something is clear and conspicuous</p> <p>20 versus the same disclosure no longer being clear and</p> <p>21 conspicuous?</p> <p>22 A. Again, I think the case law provides a</p>	<p style="text-align: right;">Page 159</p> <p>1 are similar disclosures and see what courts have</p> <p>2 kind of looked at to determine whether those are</p> <p>3 clear and conspicuous or not.</p> <p>4 Q. Yeah. So -- so let me say this.</p> <p>5 Every element of this statute --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- requires, according to the FTC,</p> <p>8 consideration of not just the disclosure themselves</p> <p>9 or the mechanism itself, but the context within</p> <p>10 which the disclosure is made or the cancellation</p> <p>11 mechanism is offered; right?</p> <p>12 MR. MENDELSON: Objection. Form.</p> <p>13 THE WITNESS: That's -- yeah,</p> <p>14 that's true. A lot of advertising you'll see cases</p> <p>15 talking about the net impression of the</p> <p>16 advertisements. It's very similar.</p> <p>17 BY MR. KABA:</p> <p>18 Q. Okay. So I'm not asking you about</p> <p>19 other advertising. So just -- again, we keep doing</p> <p>20 this thing where I ask you what I think is a pretty</p> <p>21 straightforward question, and you want to provide</p> <p>22 additional -- pardon the pun -- context.</p>
<p style="text-align: right;">Page 158</p> <p>1 lot of -- of guidance in that regard.</p> <p>2 Q. Okay. And that's what I'm trying to</p> <p>3 understand.</p> <p>4 A. Uh-huh. Yeah.</p> <p>5 Q. Like, I want to know what are the</p> <p>6 sources of defining these terms to provide me with</p> <p>7 notice of what I need to do to comply.</p> <p>8 Do you understand?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you believe that the primary</p> <p>11 source to understand what the terms that the statute</p> <p>12 uses mean is case law?</p> <p>13 A. I don't think that's -- I don't think</p> <p>14 that's what I've said.</p> <p>15 I think the statute -- it's the statute</p> <p>16 first and then to understand how courts view it, or</p> <p>17 not even to understand. It provides information</p> <p>18 about how courts view it because of the context</p> <p>19 specificity.</p> <p>20 So if I want to have a small print</p> <p>21 disclosure, you know, that is three paragraphs into</p> <p>22 text, then I'm going to look for cases where there</p>	<p style="text-align: right;">Page 160</p> <p>1 So I want to try to see if I can get an</p> <p>2 answer --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- just to my answer first.</p> <p>5 A. Uh-huh.</p> <p>6 Q. According to the FTC, every element of</p> <p>7 this statute requires consideration of not just the</p> <p>8 disclosure itself or the cancellation mechanism</p> <p>9 itself, but actually the context in which the</p> <p>10 disclosure appears or the cancellation mechanism is</p> <p>11 offered; correct?</p> <p>12 A. Yes.</p> <p>13 Q. The statute itself, however, does not</p> <p>14 tell you in what context something becomes unclear</p> <p>15 or unconspicuous; right?</p> <p>16 MR. MENDELSON: Objection. Form.</p> <p>17 BY MR. KABA:</p> <p>18 Q. I'll ask you different.</p> <p>19 This -- although context really matters</p> <p>20 here --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- the statute itself does not</p>

<p style="text-align: right;">Page 161</p> <p>1 delineate context for you; correct?</p> <p>2 A. Correct. It says what it says.</p> <p>3 Q. Okay. And is there any FTC guidance</p> <p>4 on -- on this context-specific analysis of ROSCA</p> <p>5 compliance?</p> <p>6 MR. MENDELSON: Objection. Scope.</p> <p>7 THE WITNESS: I mean, the FTC</p> <p>8 certainly provides -- we have a Business Blog that,</p> <p>9 again, kind of talks about when we bring a case what</p> <p>10 things kind of triggered scrutiny or triggered the</p> <p>11 concerns that are outlined in the complaint, right?</p> <p>12 So, but in terms of whether or not</p> <p>13 something applies is a decision by the court, right?</p> <p>14 So that's the -- so what the FTC says in some ways</p> <p>15 doesn't matter. It's -- it's helpful guidance in</p> <p>16 terms of if you want to, you know, prevent scrutiny,</p> <p>17 right? Because we go by what the courts say.</p> <p>18 When we're looking for practices</p> <p>19 that violate, we're looking at how the practices</p> <p>20 line up with the statute and line up with our</p> <p>21 understanding of those terms, but it's</p> <p>22 not -- there's no magic wand.</p>	<p style="text-align: right;">Page 163</p> <p>1 Business Blog; correct?</p> <p>2 A. Sure.</p> <p>3 Q. FTC enforcement actions; right?</p> <p>4 A. Yes.</p> <p>5 Q. FTC settlements that delineate what a</p> <p>6 business needs to do to comply with ROSCA in the</p> <p>7 future; right?</p> <p>8 A. Yes.</p> <p>9 Q. And these are all places that one could</p> <p>10 look to say, okay, this is the kind of things I need</p> <p>11 to ensure I'm doing to comply with ROSCA --</p> <p>12 A. Sure.</p> <p>13 Q. -- right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. On -- on this -- this simple</p> <p>16 mechanisms for cancellation, you agree you've</p> <p>17 already told me simple mechanisms isn't defined in</p> <p>18 the statute; right?</p> <p>19 A. Correct.</p> <p>20 Q. Can you think of any -- any case where</p> <p>21 a court has defined "simple mechanisms"?</p> <p>22 A. United States versus MyLife.</p>
<p style="text-align: right;">Page 162</p> <p>1 BY MR. KABA:</p> <p>2 Q. Yeah, I understand.</p> <p>3 There's no -- there's no checklist of</p> <p>4 things that one could look at and say if you -- as</p> <p>5 long as you check these boxes, you comply with</p> <p>6 ROSCA; correct?</p> <p>7 A. Correct.</p> <p>8 Q. The FTC has never put out there some</p> <p>9 objective list of criteria that one could review and</p> <p>10 say, oh, I do all of these things, therefore, I</p> <p>11 comply with ROSCA; right?</p> <p>12 A. Right, and that's because consumers</p> <p>13 interact with things differently. So that -- that's</p> <p>14 why it matters.</p> <p>15 Q. Okay. So some sources of guidance for</p> <p>16 a business --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- to determine whether or not they are</p> <p>19 ROSCA compliant could then be cases the FTC has</p> <p>20 brought in the past; right?</p> <p>21 A. Certainly.</p> <p>22 Q. I think you mentioned the FTC's</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. U.S. versus MyLife?</p> <p>2 A. Yes. They found that a six-part</p> <p>3 cancellation flow was not simple mechanism.</p> <p>4 Q. Do you know if in MyLife they also</p> <p>5 off -- if MyLife had also offered a toll-free number</p> <p>6 to call?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know if MyLife also offered</p> <p>9 cancellation through a chat feature?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if MyLife also offered</p> <p>12 cancellation through e-mail?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay. And do you under -- does simple</p> <p>15 mechanism mean every single cancellation pathway</p> <p>16 needs to be simple, or just that there needs to be a</p> <p>17 simple cancellation pathway?</p> <p>18 MR. MENDELSON: Objection. Scope.</p> <p>19 THE WITNESS: Let me -- the</p> <p>20 statute says "simple mechanisms." I don't know --I</p> <p>21 mean, here our allegation is that there -- there was</p> <p>22 not a simple mechanism -- at least one simple</p>

<p style="text-align: right;">Page 209</p> <p>1 Q. What FTC prior enforcement actions have</p> <p>2 said about those terms; right?</p> <p>3 MR. MENDELSON: Objection. Form.</p> <p>4 THE WITNESS: Well, I don't know</p> <p>5 that I would put it exactly that way.</p> <p>6 Like I said, the prior orders draw</p> <p>7 from the case law in the definitions of the terms.</p> <p>8 So, yes, the prior enforcement actions themselves</p> <p>9 are more of a window into, like, the kind of</p> <p>10 behaviors that concern -- that are of concern.</p> <p>11 BY MR. KABA:</p> <p>12 Q. Okay. So other than the prior court</p> <p>13 decisions, the language that's being used in the</p> <p>14 disclosures of material terms, how the material</p> <p>15 terms are being disclosed, how consumers are</p> <p>16 interacting with those terms, what consumers are</p> <p>17 saying about their interaction with those terms,</p> <p>18 what other relevant context needs to be considered</p> <p>19 to determine whether or not there's a ROSCA</p> <p>20 violation?</p> <p>21 A. Sure. For example, what did the</p> <p>22 company -- how did the company view the</p>	<p style="text-align: right;">Page 211</p> <p>1 I mean, that's -- that's all part of</p> <p>2 the soup.</p> <p>3 Q. Right. So that's what I'm</p> <p>4 trying -- I'm trying to understand. You've used a</p> <p>5 good metaphor, actually.</p> <p>6 In order to determine whether or not</p> <p>7 there's a ROSCA violation, you need to consider a</p> <p>8 soup with lots of different ingredients. Yes?</p> <p>9 A. Yes.</p> <p>10 Q. And I just want to know what those</p> <p>11 ingredients are, not necessarily specific to this</p> <p>12 case. Generally.</p> <p>13 A. Sure.</p> <p>14 Q. So --</p> <p>15 MR. MENDELSON: Objection. I'm</p> <p>16 sorry. Go ahead.</p> <p>17 BY MR. KABA:</p> <p>18 Q. So the ingredients that we've</p> <p>19 identified so far are the language used in the</p> <p>20 disclosures themselves. Yes?</p> <p>21 A. Yes.</p> <p>22 Q. Other language used around marketing</p>
<p style="text-align: right;">Page 210</p> <p>1 information -- the -- the flows. How did -- what</p> <p>2 did they know. What data did they have. You know,</p> <p>3 like I said, witness testimony about kind of</p> <p>4 potential issues. That's also a piece of it.</p> <p>5 Q. Well, that seems to be speaking to</p> <p>6 knowledge; right?</p> <p>7 A. Well, no, it's both. For example,</p> <p>8 if -- again, kind of going to -- to some of the</p> <p>9 facts of this case.</p> <p>10 Amazon had a policy that terms needed</p> <p>11 to be clearly and conspicuously disclosed. They</p> <p>12 were doing a lot of work around the idea that</p> <p>13 consumers were not aware of the terms. I think at</p> <p>14 one point it was identified as like a top 3 customer</p> <p>15 frustration, and they were trying to figure out why</p> <p>16 and part of it was because key information was</p> <p>17 missing from the enrollment flows.</p> <p>18 So it's stuff like that. It goes</p> <p>19 partially to knowledge, but it also goes partially</p> <p>20 to whether there's a violation because it was</p> <p>21 something that was persisting and not being</p> <p>22 corrected.</p>	<p style="text-align: right;">Page 212</p> <p>1 and the context of those disclosures. Yes?</p> <p>2 A. Yes.</p> <p>3 Q. The way that that language is being</p> <p>4 presented. Yes?</p> <p>5 A. Yes.</p> <p>6 Q. And the way can include colors used,</p> <p>7 font size used, location on the page, etc. Yes?</p> <p>8 A. Yes.</p> <p>9 Q. How consumers are interacting with that</p> <p>10 language?</p> <p>11 A. Yes.</p> <p>12 Q. What consumers report after the fact</p> <p>13 about how they interacted with the flows; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And so, again, just generally speaking,</p> <p>16 what other things does one need to consider as part</p> <p>17 of this, to use your word, soup of factors that you</p> <p>18 would look at to determine whether or not there's a</p> <p>19 ROSCA violation?</p> <p>20 MR. MENDELSON: Objection. Scope.</p> <p>21 THE WITNESS: Again, evidence</p> <p>22 from the company regarding what was -- what was</p>

<p style="text-align: right;">Page 213</p> <p>1 happening around those flows, around those</p> <p>2 processes. That's -- you know, like I said,</p> <p>3 testimony of witnesses who were involved in design</p> <p>4 and changes and, you know, again, it will vary some</p> <p>5 case to case based on what's available and -- but</p> <p>6 those are all things that go into it in any given</p> <p>7 case.</p> <p>8 BY MR. KABA:</p> <p>9 Q. Okay. You would agree with me that</p> <p>10 there is no formula that we can look at to determine</p> <p>11 what is a clear and conspicuous disclosure; right?</p> <p>12 A. I don't --</p> <p>13 MR. MENDELSON: Objection. Scope.</p> <p>14 THE WITNESS: -- agree with that</p> <p>15 at all.</p> <p>16 BY MR. KABA:</p> <p>17 Q. You think there is a formula?</p> <p>18 A. I think if you look at the case law and</p> <p>19 tease out the principles that that gives you a</p> <p>20 pretty good roadmap for how to comply with ROSCA.</p> <p>21 Q. Okay. Let me -- just tell me agree or</p> <p>22 disagree --</p>	<p style="text-align: right;">Page 215</p> <p>1 right?</p> <p>2 A. Correct.</p> <p>3 Q. And if I put the material terms -- does</p> <p>4 the FTC identify anywhere or does ROSCA identify</p> <p>5 anywhere where the disclosure must be placed to</p> <p>6 satisfy ROSCA?</p> <p>7 MR. MENDELSON: Objection. Scope.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. KABA:</p> <p>10 Q. Okay. Another thing that you might</p> <p>11 consider is the prominence of the disclosure;</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And that the prominence means what</p> <p>15 here?</p> <p>16 A. Could mean font size. It could mean</p> <p>17 whether -- it could mean font color. It could mean</p> <p>18 placement. It could mean whether a consumer has to</p> <p>19 acknowledge that they've seen the disclosure before</p> <p>20 they take the, you know, operative action.</p> <p>21 Again, it could be something like</p> <p>22 making the consumer re-input their billing</p>
<p style="text-align: right;">Page 214</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- with the following statement:</p> <p>3 There is no set formula for a clear and</p> <p>4 conspicuous disclosure.</p> <p>5 MR. MENDELSON: Objection. Scope.</p> <p>6 BY MR. KABA:</p> <p>7 Q. Agree or disagree?</p> <p>8 A. Agree because it's context-specific.</p> <p>9 Q. Okay. That's my question.</p> <p>10 A. Okay.</p> <p>11 Q. You would agree that there is no</p> <p>12 formula that someone can go look at and say, if I</p> <p>13 satisfy this formula, my disclosures are clear and</p> <p>14 conspicuous; correct?</p> <p>15 A. Right. There's no --</p> <p>16 MR. MENDELSON: Same objection.</p> <p>17 THE WITNESS: There's no</p> <p>18 checklist, to use a term used earlier. Correct.</p> <p>19 BY MR. KABA:</p> <p>20 Q. And so things that we've talked about</p> <p>21 that the FTC may consider include things like where</p> <p>22 the disclosure is placed of the material terms;</p>	<p style="text-align: right;">Page 216</p> <p>1 information specifically to engage in a transaction.</p> <p>2 That would be a good way, you know, to figure out</p> <p>3 whether they intended to or whether they understood</p> <p>4 what they were doing. You know, there's a lot of</p> <p>5 different ways again.</p> <p>6 Q. Context-specific.</p> <p>7 A. Well, context-specific, but also, you</p> <p>8 know, it may depend. I mean, context-specific. It</p> <p>9 depends on people's creativity. It depends on</p> <p>10 people's understanding. It depends on what -- you</p> <p>11 know, there may be something that on the surface you</p> <p>12 might not recognize as clear and conspicuous, but</p> <p>13 data might show that it's clear and conspicuous.</p> <p>14 Q. Okay. So --</p> <p>15 A. You know. So there's a lot of</p> <p>16 different ways to determine it, but at the end of</p> <p>17 the day, you got to make sure that consumers are</p> <p>18 understanding that's the touchstone.</p> <p>19 Q. Okay. So, but in order for -- the FTC</p> <p>20 has said that -- you're familiar with the Dot Com</p> <p>21 Disclosures?</p> <p>22 A. Yes.</p>

<p style="text-align: right;">Page 253</p> <p>1 showed you -- strike that. Let me -- let me try the</p> <p>2 question.</p> <p>3 So if I showed you the Walmart+</p> <p>4 enrollment flows, could you look at those flows and</p> <p>5 tell us whether or not they violate ROSCA?</p> <p>6 MR. MENDELSON: Objection. Scope.</p> <p>7 THE WITNESS: No. I could tell</p> <p>8 you whether I would have concerns about one, but I</p> <p>9 could not tell you definitively one way or the</p> <p>10 other.</p> <p>11 BY MR. KABA:</p> <p>12 Q. Okay. And would the same be true</p> <p>13 regardless of what company negative option feature</p> <p>14 enrollment flow I presented to you? Like could you</p> <p>15 look at anyone's negative option enrollment flow and</p> <p>16 tell us whether or not they violate ROSCA?</p> <p>17 MR. MENDELSON: Same objection.</p> <p>18 THE WITNESS: I don't know that</p> <p>19 anyone could do it on the fly. That's why we</p> <p>20 conduct investigations and we seek information.</p> <p>21 BY MR. KABA:</p> <p>22 Q. Okay. So my question is a yes or a no.</p>	<p style="text-align: right;">Page 255</p> <p>1 comply with ROSCA"?</p> <p>2 A. Again, there's no one set way Amazon</p> <p>3 would have to change its flows to comply with ROSCA.</p> <p>4 Q. So is --</p> <p>5 A. But yes. In -- in a way, yes.</p> <p>6 Q. Okay. So I want the specific instance.</p> <p>7 Has the FTC said to Amazon, "If you</p> <p>8 make the following changes to your flow, you will</p> <p>9 comply with ROSCA"?</p> <p>10 A. Not in those words, no.</p> <p>11 Q. In any words similar to those words,</p> <p>12 has the FTC said, "Amazon, if you make these changes</p> <p>13 to your flows, you will comply with ROSCA"?</p> <p>14 A. So the FTC has identified a number of</p> <p>15 the problems with the flows, and presumably if those</p> <p>16 problems were corrected, you'd still have to see how</p> <p>17 consumers interact with the resulting flows, but</p> <p>18 that certainly would be a long step towards.</p> <p>19 But I -- so I don't have a definitive</p> <p>20 list because there's a lot of ways you can</p> <p>21 accomplish it.</p> <p>22 Q. Okay. So you're -- you're changing my</p>
<p style="text-align: right;">Page 254</p> <p>1 A. Correct.</p> <p>2 Q. So let me ask you -- let me ask you</p> <p>3 again my question, which is --</p> <p>4 A. Uh-huh.</p> <p>5 Q. If it's hard to understand, let me know</p> <p>6 and I'll change the question.</p> <p>7 My question for you is: For anything</p> <p>8 that the FTC may claim is a negative option feature,</p> <p>9 could you look at the flows themselves and determine</p> <p>10 whether or not they violate ROSCA? Yes or no.</p> <p>11 MR. MENDELSON: Same objection.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. KABA:</p> <p>14 Q. Okay. Thank you.</p> <p>15 Now, the FTC has alleged in this case</p> <p>16 that Amazon's flows -- enrollment flows going back</p> <p>17 to 2014 to, I believe, present violate ROSCA --</p> <p>18 A. Yes.</p> <p>19 Q. -- correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Has the FTC told Amazon, "You</p> <p>22 need to change your flows in the following ways to</p>	<p style="text-align: right;">Page 256</p> <p>1 question and actually not providing me something</p> <p>2 that I think is responsive to the question.</p> <p>3 So if you're having a hard time with my</p> <p>4 question, ask me that to restate the question.</p> <p>5 I'm asking you: Can you identify a</p> <p>6 single instance in which the FTC has said to Amazon,</p> <p>7 "If you change A, B, C, D, and E, you will comply</p> <p>8 with ROSCA"?</p> <p>9 A. We haven't had those conversations, no.</p> <p>10 Q. Okay. Sitting here today,</p> <p>11 September 10, 2024 --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- are you prepared to identify a list</p> <p>14 of changes that if Amazon implements those changes,</p> <p>15 the FTC will conclude that it complies with ROSCA?</p> <p>16 Yes or no.</p> <p>17 A. I can sit here today and identify some</p> <p>18 ways Amazon could comply with ROSCA. Would it be a</p> <p>19 comprehensive A to Z soup to nuts all of the ways?</p> <p>20 No.</p> <p>21 Q. Okay. So my question again: Sitting</p> <p>22 here today, over a year into this litigation, are</p>

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<p style="text-align: right;">Page 257</p> <p>1 you prepared to identify a list of things that if</p> <p>2 Amazon changes those things, it will comply with</p> <p>3 ROSCA, according to the FTC? Yes or no.</p> <p>4 MR. MENDELSON: Objection. Asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: I think I answered</p> <p>7 it.</p> <p>8 There are certain things that</p> <p>9 certainly would comply with ROSCA, and I can</p> <p>10 identify those. There may be others and -- but,</p> <p>11 again, those are going to depend on what Amazon</p> <p>12 makes them look like, operate like.</p> <p>13 So that -- so, for example, for</p> <p>14 the cancellation, when you go to any Amazon site,</p> <p>15 there could be a large button that says "End</p> <p>16 membership in Prime." And when the person clicks</p> <p>17 that button, nothing else happens besides their --</p> <p>18 their membership is ended.</p> <p>19 By the same token, rather than</p> <p>20 interspersing Prime offers with other transactions</p> <p>21 where people may not be looking to enroll, you could</p> <p>22 have a big button that says "Sign up for Amazon</p>	<p style="text-align: right;">Page 259</p> <p>1 A. Yes.</p> <p>2 Q. Has the FTC identified for Amazon how</p> <p>3 to solve those problems?</p> <p>4 A. That may differ. Depending on the</p> <p>5 problem, that may differ. I mean, we --</p> <p>6 Q. So my question is not that.</p> <p>7 A. Right.</p> <p>8 Q. It's a yes or a no question in there.</p> <p>9 A. Right.</p> <p>10 Q. I feel like I'm asking you yes or no</p> <p>11 questions and I'm getting sort of monologues in</p> <p>12 response.</p> <p>13 So there's no question pending. Let me</p> <p>14 ask my question, please.</p> <p>15 My question, yes or no: To your</p> <p>16 knowledge, has the FTC identified what Amazon must</p> <p>17 do to solve the problems the FTC believes exists</p> <p>18 with the flows?</p> <p>19 A. I just gave two solutions, but no,</p> <p>20 not -- not a list of all of the things that can be</p> <p>21 done to correct all of the problems.</p> <p>22 Q. Okay. So let me get that.</p>
<p style="text-align: right;">Page 258</p> <p>1 Prime." And when they click on that button, terms</p> <p>2 are only relating to Prime, including the duration,</p> <p>3 the auto renewal terms. The monthly terms are</p> <p>4 presented, and then the consumer has to enter their</p> <p>5 billing information in order to consent with those</p> <p>6 terms.</p> <p>7 Those are two really simple ways</p> <p>8 to -- to do that. There may be myriad others. Like</p> <p>9 I said, we've listed all the -- identified all the</p> <p>10 problems with the flows, and each of those would</p> <p>11 need to be corrected.</p> <p>12 But how that there is -- companies</p> <p>13 are given discretion in how to correct that, as long</p> <p>14 as it ends up resulting in consumers being given</p> <p>15 clear and conspicuous disclosures and express</p> <p>16 informed consent.</p> <p>17 BY MR. KABA:</p> <p>18 Q. Okay. So let's break that up a little</p> <p>19 bit.</p> <p>20 A. Uh-huh.</p> <p>21 Q. So you're -- what the FTC has done is</p> <p>22 identify problems with the flows; correct?</p>	<p style="text-align: right;">Page 260</p> <p>1 So the FTC has not identified to Amazon</p> <p>2 a list of all the things Amazon can do to resolve or</p> <p>3 to come into compliance, according to the FTC, with</p> <p>4 ROSCA; correct?</p> <p>5 MR. MENDELSON: Objection. Asked</p> <p>6 and answered.</p> <p>7 THE WITNESS: Correct.</p> <p>8 BY MR. KABA:</p> <p>9 Q. Okay. And even you, sitting here</p> <p>10 today, are not prepared to provide a list of all of</p> <p>11 the things Amazon could do to come into compliance,</p> <p>12 according to the FTC, with ROSCA; correct?</p> <p>13 A. I don't have the technical knowledge of</p> <p>14 Amazon's systems to be able to do that.</p> <p>15 Q. Okay. You said one of the things that</p> <p>16 maybe could happen is a big button --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- on every Amazon page that says "End</p> <p>19 membership."</p> <p>20 Do you recall that?</p> <p>21 A. "End membership in Prime," yes.</p> <p>22 Q. Okay. So what would the words have to</p>

<p style="text-align: right;">Page 293</p> <p>1 A. Again, for fair notice, just the</p> <p>2 statute.</p> <p>3 Q. So the answer is no, there is nothing</p> <p>4 further?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Other than -- you have -- let me</p> <p>7 ask you a different way.</p> <p>8 What FTC documents or publications</p> <p>9 provided guidance to Amazon or the industry at large</p> <p>10 about the things that it must do to comply with</p> <p>11 ROSCA?</p> <p>12 MR. MENDELSON: Objection. Scope.</p> <p>13 THE WITNESS: Again, I think the</p> <p>14 prior enforcement actions, which we identify in our</p> <p>15 interrogatory responses, provide a good roadmap.</p> <p>16 The orders also provide a good roadmap for</p> <p>17 compliance.</p> <p>18 BY MR. KABA:</p> <p>19 Q. What orders?</p> <p>20 A. The orders that were entered in those</p> <p>21 enforcement actions, whether by consent or by a</p> <p>22 court.</p>	<p style="text-align: right;">Page 295</p> <p>1 then the orders, again, I think give -- give a</p> <p>2 roadmap in terms of how to comply.</p> <p>3 Q. Okay. So that's -- that's what I'm</p> <p>4 trying to understand.</p> <p>5 A. Uh-huh.</p> <p>6 Q. So what I asked you is: If Amazon or</p> <p>7 industry wanted to understand how to comply with</p> <p>8 ROSCA --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- your testimony is: They could look</p> <p>11 at FTC enforcement actions, the orders entered those</p> <p>12 FTC -- in those FTC enforcement actions, case law,</p> <p>13 and the negative option policy statement; correct?</p> <p>14 MR. MENDELSON: Objection. Scope.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. KABA:</p> <p>17 Q. Anything else?</p> <p>18 MR. MENDELSON: Same objection.</p> <p>19 THE WITNESS: Besides the</p> <p>20 statute, no.</p> <p>21 BY MR. KABA:</p> <p>22 Q. Okay. Thank you.</p>
<p style="text-align: right;">Page 294</p> <p>1 Q. Anything else?</p> <p>2 A. Again, case law.</p> <p>3 Q. Anything else?</p> <p>4 A. I mean, certainly the negative option</p> <p>5 policy statement would outline what things the</p> <p>6 Commission was interested in in terms of enforcing</p> <p>7 or ensuring the negative option programs are</p> <p>8 appropriately disclosed. So, again, in terms of</p> <p>9 conduct, that would be problematic. It's a good</p> <p>10 starting point.</p> <p>11 Q. Okay. Anything else?</p> <p>12 So you said FTC enforcement actions,</p> <p>13 the orders entered in those enforcement actions,</p> <p>14 case law, and the negative option policy statement</p> <p>15 are all places that Amazon or the industry at large</p> <p>16 could look to get the FTC's guidance on what it must</p> <p>17 do to comply with ROSCA; correct?</p> <p>18 A. Well, certainly to look at what -- what</p> <p>19 conduct has been alleged to be problematic and what</p> <p>20 conduct has been alleged or courts have found to be</p> <p>21 problematic in terms of providing the appropriate</p> <p>22 notice and obtaining the appropriate consents. And</p>	<p style="text-align: right;">Page 296</p> <p>1 Is there -- you mentioned that you</p> <p>2 can't determine just by looking at a flow whether or</p> <p>3 not it complies with ROSCA; is that right?</p> <p>4 MR. MENDELSON: Objection. Form.</p> <p>5 Scope.</p> <p>6 THE WITNESS: Sitting here today</p> <p>7 with an unfamiliar flow, correct.</p> <p>8 BY MR. KABA:</p> <p>9 Q. Okay. Now, in the complaint, I just</p> <p>10 want to ask you. We looked at -- on page 11.</p> <p>11 A. Uh-huh.</p> <p>12 Q. We talked about the "UPDP on Desktop."</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall that?</p> <p>15 And you said, oh, here the button which</p> <p>16 says "Get FREE Two-Day Shipping"; right?</p> <p>17 A. Yes.</p> <p>18 Q. And -- but this is an excerpt of a</p> <p>19 larger page, isn't it?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So the -- the text on the page</p> <p>22 that the FTC is taking issue with that's identified</p>

<p style="text-align: right;">Page 349</p> <p>1 the thing. So in this case, simple.</p> <p>2 Q. Okay. And the FTC has identified some</p> <p>3 20-odd things that one would consider and decide, in</p> <p>4 this case at least, in deciding whether or not</p> <p>5 something is simple; correct?</p> <p>6 Do you want me to help you?</p> <p>7 A. Yes, please.</p> <p>8 Q. Okay. Let's go to Exhibit 2, please.</p> <p>9 A. Sure.</p> <p>10 Q. Which is, again, for purpose of the</p> <p>11 record, this is a document that the FTC produced in</p> <p>12 this case --</p> <p>13 A. Yes.</p> <p>14 Q. -- in response to certain questions</p> <p>15 we've asked in this litigation; right?</p> <p>16 A. Yes.</p> <p>17 Q. So go to page 50.</p> <p>18 You see it says:</p> <p>19 "Determining whether an online</p> <p>20 cancellation process is 'simple' is a fact-specific</p> <p>21 inquiry into that particular process, not</p> <p>22 necessarily determined solely by the number of</p>	<p style="text-align: right;">Page 351</p> <p>1 Q. So what I'm specifically asking about</p> <p>2 is with respect to the 20 some-odd factors --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- listed on page 50, 51, over to 52</p> <p>5 that the FTC contends are things that would be</p> <p>6 considered in order to determine whether or not a</p> <p>7 cancellation mechanism is simple.</p> <p>8 Are you with me?</p> <p>9 A. Yes.</p> <p>10 Q. Can you identify for us any case,</p> <p>11 policy document, rule, regulation, FTC guidance that</p> <p>12 lists all of these things as the factors that one</p> <p>13 would need to consider in order to comply with the</p> <p>14 ROSCA requirement for a simple cancellation</p> <p>15 mechanism?</p> <p>16 A. So not in a single case. Not in a</p> <p>17 single case. So, again, because it's a</p> <p>18 fact-specific inquiry, you're going to get that from</p> <p>19 cases alleging cancellation violations. The</p> <p>20 business practices that were alleged to be</p> <p>21 violative.</p> <p>22 You will get it from some cases like</p>
<p style="text-align: right;">Page 350</p> <p>1 clicks to cancel."</p> <p>2 A. Yes.</p> <p>3 Q. And then the FTC lists I think it's</p> <p>4 some 20-odd different things that would be</p> <p>5 considered to decide whether or not something is</p> <p>6 simple; right?</p> <p>7 MR. MENDELSON: Objection. Form.</p> <p>8 THE WITNESS: Yeah. To the extent</p> <p>9 that they're pertinent, yes.</p> <p>10 BY MR. KABA:</p> <p>11 Q. Okay. And can you identify for us any</p> <p>12 case, enforcement proceeding, policy document,</p> <p>13 statute, rule or regulation that lists all of these</p> <p>14 things as factors that a company must consider in</p> <p>15 order to determine whether or not its cancellation</p> <p>16 mechanism is simple?</p> <p>17 MR. MENDELSON: Objection. Form.</p> <p>18 THE WITNESS: (Reviews document.)</p> <p>19 I'm just looking to see whether</p> <p>20 there was an interrogatory where we identified</p> <p>21 cases.</p> <p>22 BY MR. KABA:</p>	<p style="text-align: right;">Page 352</p> <p>1 U.S. versus MyLife, which looked, you know, a court</p> <p>2 looked at one and gleaned some principles, and --</p> <p>3 but there's not a single document that lists out</p> <p>4 because of the fact-specific nature of the inquiry.</p> <p>5 Q. Okay. So that's what I wanted. So</p> <p>6 that's the part I'd like. I want to make sure I</p> <p>7 understand.</p> <p>8 A. Uh-huh.</p> <p>9 Q. So in this case, in response to a</p> <p>10 question we asked in this litigation, the FTC</p> <p>11 identified some 20-odd things that would be</p> <p>12 considered to decide whether or not a cancellation</p> <p>13 mechanism is simple; right?</p> <p>14 MR. MENDELSON: Objection. Form.</p> <p>15 THE WITNESS: (Pause).</p> <p>16 BY MR. KABA:</p> <p>17 Q. That's what we're looking at in this</p> <p>18 Exhibit 2; correct?</p> <p>19 A. Right. I'm just looking back at the</p> <p>20 question to make sure.</p> <p>21 (Reviews document.)</p> <p>22 Can you ask the question again?</p>

<p style="text-align: right;">Page 353</p> <p>1 Q. Yeah.</p> <p>2 In this case, in response to a question</p> <p>3 we asked in this litigation, the FTC identified some</p> <p>4 20-odd things that would be considered to determine</p> <p>5 whether or not a cancellation mechanism is simple;</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And there is not a single document that</p> <p>9 you could identify for us that lists out all of</p> <p>10 these criteria; correct?</p> <p>11 A. No.</p> <p>12 Q. Is that correct?</p> <p>13 A. Oh, yes, that's correct. Sorry.</p> <p>14 Q. The FTC has never put out a document or</p> <p>15 guidance saying that these are the 20 some-odd</p> <p>16 things you would consider in order to determine</p> <p>17 whether or not a cancellation mechanism is simple;</p> <p>18 correct?</p> <p>19 A. (Pause). I don't believe so, but I'm</p> <p>20 not a hundred percent sure.</p> <p>21 Q. Okay. Let's -- I want to ask you about</p> <p>22 a couple of these.</p>	<p style="text-align: right;">Page 355</p> <p>1 something to be simple versus not simple?</p> <p>2 MR. MENDELSON: Objection. Scope.</p> <p>3 THE WITNESS: I mean, again,</p> <p>4 there's no one-size-fits-all. I mean, here the</p> <p>5 number of steps that the Iliad Flow required was not</p> <p>6 simple. Among other things, it made consumers have</p> <p>7 to confirm their intent to cancel multiple times</p> <p>8 before actually canceling.</p> <p>9 If you took any step, if you</p> <p>10 clicked any of the other buttons, you were taken out</p> <p>11 of the flow and it wasn't entirely clear that you</p> <p>12 had not canceled.</p> <p>13 I mean, that's -- that's what we</p> <p>14 mean by the number of steps. So you could have two</p> <p>15 steps; right? One which is completely distracting</p> <p>16 and completely obstructing the ability to cancel,</p> <p>17 and that might not be simple. A three- or four-step</p> <p>18 path that doesn't do that might be simple.</p> <p>19 Again, without seeing what the</p> <p>20 path would look like, I can tell you why here it's</p> <p>21 not, but in a vacuum, no.</p> <p>22 BY MR. KABA:</p>
<p style="text-align: right;">Page 354</p> <p>1 A. Sure.</p> <p>2 Q. On page 51, it says:</p> <p>3 "The number of steps a consumer must</p> <p>4 complete in order to cancel."</p> <p>5 That's one of the things that is</p> <p>6 considered in order to assess whether or not a</p> <p>7 cancellation mechanism is simple; right?</p> <p>8 A. Sorry. Where is? Which bullet are you</p> <p>9 looking at?</p> <p>10 Q. On page 51.</p> <p>11 A. 51. Okay.</p> <p>12 Q. Uh-huh. Yeah. It's the second bullet</p> <p>13 from the top.</p> <p>14 A. Got it.</p> <p>15 Q. So one of the things the FTC identifies</p> <p>16 as relevant to the inquiry to determine whether or</p> <p>17 not a cancellation mechanism is simple is "The</p> <p>18 number of steps a consumer must complete in order to</p> <p>19 cancel"; right?</p> <p>20 A. Yes.</p> <p>21 Q. Can you tell us in an objective</p> <p>22 quantifiable way what number of steps it takes for</p>	<p style="text-align: right;">Page 356</p> <p>1 Q. Right.</p> <p>2 So not everyone who's going to -- who</p> <p>3 wants to comply with ROSCA has the benefit of the</p> <p>4 FTC filing a lawsuit against them; right? Or the</p> <p>5 burden.</p> <p>6 MR. MENDELSON: Objection. Scope.</p> <p>7 BY MR. KABA:</p> <p>8 Q. You'd agree that there are lots of</p> <p>9 people who violate ROSCA that the FTC never brings</p> <p>10 an action against; right?</p> <p>11 MR. MENDELSON: Objection. Scope.</p> <p>12 THE WITNESS: I don't know one</p> <p>13 way or the other.</p> <p>14 BY MR. KABA:</p> <p>15 Q. Do you believe that there are people in</p> <p>16 the marketplace today that are violating ROSCA that</p> <p>17 the FTC has not brought an action against?</p> <p>18 MR. MENDELSON: Objection. Scope.</p> <p>19 THE WITNESS: Possibly but --</p> <p>20 BY MR. KABA:</p> <p>21 Q. You haven't looked into it?</p> <p>22 A. -- I don't know one way or the other.</p>

<p style="text-align: right;">Page 361</p> <p>1 Q. Do you have guidance on any of those?</p> <p>2 A. No, because, again, it will depend on.</p> <p>3 Q. Okay. So that's my --</p> <p>4 A. Yeah.</p> <p>5 Q. I don't know why the distinction would</p> <p>6 then matter, but my --</p> <p>7 A. Just "length of time to cancel" is a</p> <p>8 little vague to me. I just -- because how long is</p> <p>9 the overall process? How long is any step in the</p> <p>10 process? Because that could matter.</p> <p>11 Q. Yeah. Ms. Basta, I will stipulate to</p> <p>12 you that the FTC's own response here "The length of</p> <p>13 time to cancel" is probably vague.</p> <p>14 So with that common understanding.</p> <p>15 The FTC is the one that told us the</p> <p>16 length of time to cancel --</p> <p>17 A. Sure.</p> <p>18 Q. -- matters; right?</p> <p>19 A. Well, I think --</p> <p>20 Q. So the FTC is the one that told us "The</p> <p>21 length of time to cancel" is a relevant</p> <p>22 consideration on whether or not a mechanism is</p>	<p style="text-align: right;">Page 363</p> <p>1 So, but no, there is -- there is</p> <p>2 no guidance there.</p> <p>3 BY MR. KABA:</p> <p>4 Q. Okay.</p> <p>5 A. I just want to be -- I just want to</p> <p>6 make sure we're clear.</p> <p>7 Q. So even the broader inquiry about the</p> <p>8 length of time it takes to cancel, is there any</p> <p>9 guidance on how long is too long in -- in order to</p> <p>10 comply with ROSCA?</p> <p>11 MR. MENDELSON: Objection. Scope.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. KABA:</p> <p>14 Q. Okay.</p> <p>15 A. Again, it's going to be</p> <p>16 context-specific.</p> <p>17 Q. "The number of alternatives to</p> <p>18 cancellation presented to a consumer seeking to</p> <p>19 cancel."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Again, same question.</p>
<p style="text-align: right;">Page 362</p> <p>1 simple; correct?</p> <p>2 A. Sure.</p> <p>3 Q. And what I want to know from you is:</p> <p>4 Is there something out there in the guidance that</p> <p>5 the FTC has published or anywhere where a business</p> <p>6 could say, okay, if it takes 20 seconds or 30</p> <p>7 seconds or 40 seconds or 2 minutes to get through</p> <p>8 and cancel, that's simple, but if it takes more than</p> <p>9 that time, it's no longer simple?</p> <p>10 MR. MENDELSON: Objection. Scope.</p> <p>11 THE WITNESS: Right. Well,</p> <p>12 that -- and that's my difficulty because I think you</p> <p>13 and I are using that term differently.</p> <p>14 "The length of time to cancel."</p> <p>15 The time from a -- the time a consumer begins the</p> <p>16 effort to cancel until they are actually</p> <p>17 successfully unsubscribed from that process is what</p> <p>18 I think gets looked at.</p> <p>19 To reduce it down the way the</p> <p>20 question does to the number of seconds, that</p> <p>21 presumes that they've already found the place, and I</p> <p>22 think it's a broader inquiry than that.</p>	<p style="text-align: right;">Page 364</p> <p>1 Is there guidance from the FTC on how</p> <p>2 many alternatives to cancellation are too many in</p> <p>3 order to comply with ROSCA?</p> <p>4 A. Again --</p> <p>5 MR. MENDELSON: Same objection.</p> <p>6 THE WITNESS: -- you're asking</p> <p>7 about a single document?</p> <p>8 BY MR. KABA:</p> <p>9 Q. Well, I'm asking if I want to look</p> <p>10 at -- I want to present alternatives to cancellation</p> <p>11 to present to a customer.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Where do I look to see what are too</p> <p>14 many alternatives to present versus a just right</p> <p>15 amount?</p> <p>16 MR. MENDELSON: Same objection.</p> <p>17 THE WITNESS: So, again, there's</p> <p>18 no single document. However, if you look at the</p> <p>19 cases that have been brought, the enforcement</p> <p>20 actions that have been brought, whether by a consent</p> <p>21 decree or through litigation, then it will outline</p> <p>22 business practices that were found to violate ROSCA</p>

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<p style="text-align: right;">Page 405</p> <p>1 Amazon is using to say those things. 2 That's what is underlying the 3 complaint; correct? 4 MR. MENDELSON: Objection. Vague. 5 THE WITNESS: It's about lack of 6 disclosure, lack of consent, lack of simple 7 mechanism, and the unfair practice that results from 8 or that -- that is parallel with the lack of express 9 informed consent. 10 BY MR. KABA: 11 Q. So, and, again, you're sort of reciting 12 the elements of the statute. 13 A. Right. 14 Q. But we've talked about throughout the 15 day today that this is not a complaint about false 16 statements made by Amazon; right? 17 A. Correct. It's not a deception case. 18 Q. Right. It's not a complaint about 19 false or deceptive statements made by Amazon; 20 correct? 21 A. Yes. 22 Q. What this is about in the context of</p>	<p style="text-align: right;">Page 407</p> <p>1 CERTIFICATE OF REPORTER 2 DISTRICT OF COLUMBIA) 3 I, Denise Dobner Vickery, CRR, RMR and 4 Notary Public, hereby certify the witness, AMANDA 5 BASTA, was by me first duly sworn to testify to the 6 truth; that the said deposition was recorded by me 7 and thereafter reduced to printing under my 8 direction; and that said deposition is a true 9 transcript of my original stenographic notes. 10 I certify the inspection, reading and 11 signing of said deposition were NOT waived by 12 counsel for the respective parties and by the 13 witness; that I am not a relative or employee of any 14 of the parties, or a relative or employee of either 15 counsel, and I am in no way interested directly or 16 indirectly in this action. 17 CERTIFIED TO THIS 20TH DAY OF SEPTEMBER, 2024. 18 <i>Denise D. Vickery</i> 19 DENISE DOBNER VICKERY, CRR,RMR 20 Notary Public in and for the 21 District of Columbia 22 My Commission expires: March 14, 2028</p>
<p style="text-align: right;">Page 406</p> <p>1 even those elements that you recited, as we talked 2 about with respect to dark patterns and otherwise, 3 is the things, the actual words Amazon is using to 4 present to consumers for enrollment and cancellation 5 and how that information is being presented to 6 consumers; correct? 7 MR. MENDELSON: Objection. Vague. 8 Witness should answer, but we're at 4:31. 9 THE WITNESS: And whether it's 10 adequately disclosed to consumers, but yes. 11 MR. KABA: Okay. Thank you. We 12 can break for today. 13 MR. MENDELSON: All right. 14 Thanks. 15 THE VIDEOGRAPHER: We are off the 16 record at 4:31. 17 18 (Signature not waived, the deposition 19 recessed for the day at 4:31 PM.) 20 21 * * * 22</p>	<p style="text-align: right;">Page 408</p> <p>1 DEPOSITION ERRATA SHEET 2 3 Our Assignment No. J11644778 4 Case Caption: FEDERAL TRADE COMMISSION vs. 5 AMAZON.COM, INC., et al. 6 7 DECLARATION UNDER PENALTY OF PERJURY 8 I declare under penalty of perjury 9 that I have read the entire transcript of 10 my Deposition taken in the captioned matter 11 or the same has been read to me, and 12 the same is true and accurate, save and 13 except for changes and/or corrections, if 14 any, as indicated by me on the DEPOSITION 15 ERRATA SHEET hereof, with the understanding 16 that I offer these changes as if still under 17 oath. 18 Signed on the _____ day of 19 _____, 2024. 20 21 _____ 22 AMANDA BASTA</p>